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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Rosanne Michelle Schnapp,

No. CV-22-00664-PHX-SPL

9 Plaintiff,

ORDER

10 vs.

11 Commissioner of Social Security
12 Administration,

13 Defendant.
14

15 Plaintiff Rosanne Michelle Schnapp (“Plaintiff”) seeks judicial review of the denial
16 of her application for disability insurance benefits under the Social Security Act, 42 U.S.C.
17 § 405(g). Before the Court are Plaintiff’s Opening Brief (Doc. 14), Defendant
18 Commissioner of Social Security Administration’s (“Defendant”) Response Brief
19 (Doc. 18), and Plaintiff’s Reply Brief (Doc. 19). Upon review, the Court vacates the
20 Administrative Law Judge’s (“ALJ”) decision (AR¹ at 26–38) and remands for further
21 proceedings consistent with this Order.

22 **I. BACKGROUND**

23 On October 31, 2019, Plaintiff filed Title II and Title XVI applications for disability
24 insurance benefits and supplemental security income benefits, alleging a period of
25 disability beginning on November 20, 2018. (AR 29). Her claim was initially denied on
26 May 12, 2020, and again upon reconsideration on October 28, 2020. (*Id.*). Plaintiff testified
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28 ¹ Administrative Record (*see* Doc. 10).

1 at a telephonic administrative hearing on April 13, 2021 (AR 84–118), after which the ALJ
2 found Plaintiff was not disabled from November 20, 2018 through April 29, 2021 (AR at
3 38). In making this finding, the ALJ concluded that Plaintiff passed the first four steps in
4 demonstrating a disability: (i) Plaintiff has *not* engaged in substantial gainful activity since
5 the alleged onset date (AR 31); (ii) Plaintiff has two “severe” medically determinable
6 impairments (traumatic brain injury and migraine) (AR 32); and (iii) Plaintiff does *not* have
7 an impairment or combination of impairments that meets or medically equals an
8 impairment listed in the regulations, and Plaintiff has the residual functional capacity
9 (“RFC”) to perform light work with a few specific exceptions (AR 31–34); and
10 (iv) Plaintiff is *unable* to perform any past relevant work (AR 36). However, at step five
11 of the analysis, the ALJ found that “there are jobs that exist in significant numbers in the
12 national economy that [Plaintiff] can perform” and that “[a] finding of ‘not disabled’ is
13 therefore appropriate.” (AR 37).

14 On March 30, 2022, the Appeals Council denied Plaintiff’s request for review and
15 adopted the ALJ’s decision as the agency’s final decision. (AR at 1). On April 20, 2022,
16 Plaintiff timely filed this action for review of the ALJ’s decision. (Doc. 1). On July 5, 2022,
17 the Court received the administrative record. (Doc. 10). On November 2, 2022, Plaintiff
18 filed her Opening Brief (Doc. 14). On December 22, 2022, Defendant filed its Response
19 Brief (Doc. 18). On January 5, 2023, Plaintiff filed her Reply Brief (Doc. 19). This Court
20 has fully reviewed the parties’ briefing and the medical record and will discuss the pertinent
21 medical evidence in addressing the issues raised by the parties.

22 **II. LEGAL STANDARD**

23 A person is considered “disabled” for the purpose of receiving social security
24 benefits if they are unable to “engage in any substantial gainful activity by reason of any
25 medically determinable physical or mental impairment which can be expected to result in
26 death or which has lasted or can be expected to last for a continuous period of not less than
27 12 months.” 42 U.S.C. § 423(d)(1)(A). In determining whether to reverse an ALJ’s
28 decision, the district court reviews only those issues raised by the party challenging the

1 decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The Court may set
2 aside the Commissioner’s disability determination only if it is not supported by substantial
3 evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).
4 Substantial evidence is relevant evidence that a reasonable person might accept as adequate
5 to support a conclusion. *Id.* To determine whether substantial evidence supports a decision,
6 the Court must consider the record as a whole and may not affirm simply by isolating a
7 “specific quantum of supporting evidence.” *Id.* (citation omitted). Generally, “[w]here the
8 evidence is susceptible to more than one rational interpretation, one of which supports the
9 ALJ’s decision, the ALJ’s conclusion must be upheld.” *Thomas v. Barnhart*, 278 F.3d 947,
10 954 (9th Cir. 2002).

11 To determine whether a claimant is disabled for purposes of the Act, the ALJ
12 follows a five-step process. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing
13 20 C.F.R. § 404.1520(a)). The claimant bears the burden of proof on the first four steps,
14 and the burden shifts to the Commissioner at step five. *Id.* At step *one*, the ALJ determines
15 whether the claimant is presently engaging in substantial gainful activity.
16 § 404.1520(a)(4)(i). At step *two*, the ALJ determines whether the claimant has a “severe”
17 medically determinable physical or mental impairment. § 404.1520(a)(4)(ii). At step *three*,
18 the ALJ considers whether the claimant’s impairment or combination of impairments meets
19 or medically equals an impairment listed in the regulations.² § 404.1520(a)(4)(iii). If so,
20 the claimant is automatically found to be disabled. *Id.* If not, the ALJ determines the
21 claimant’s residual functional capacity (“RFC”). §§ 404.1520(e), 416.920(e). At step *four*,
22 the ALJ determines whether the claimant’s RFC precludes her from performing her past
23 relevant work. § 404.1520(a)(4)(iv). If so, the ALJ proceeds to the *fifth* and final step,
24 where they determine whether the claimant can perform any other work in the national
25 economy based on the claimant’s RFC, age, education, and work experience.
26 § 404.1520(a)(4)(v). If not, the claimant is disabled. *Id.*

27 ² The impairments “listed in the regulations” are found in Appendix 1 to Subpart P
28 of 20 C.F.R. Part 404.

1 **III. DISCUSSION**

2 Plaintiff argues that the ALJ erred by (1) rejecting Plaintiff's symptom testimony
3 and (2) finding the opinions of the non-examining state agency physicians to be persuasive.
4 The Court finds that the ALJ erred with respect to the first issue and therefore does not
5 address the second issue, as Plaintiff concedes that it is moot as a result. (Doc. 14 at 12).

6 An ALJ must perform a two-step analysis to determine the credibility of a claimant's
7 pain and symptom testimony. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035–36 (9th Cir.
8 2007). First, the ALJ must determine whether the claimant has presented objective medical
9 evidence of an underlying impairment “which could reasonably be expected to produce the
10 pain or other symptoms alleged.” *Id.* at 1036. If the claimant meets this burden and there
11 is no evidence of malingering, the ALJ must provide “specific, clear and convincing”
12 reasons for rejecting the testimony. *Id.* at 1036. “The ALJ must state specifically which
13 symptom testimony is not credible and what facts in the record lead to that conclusion.”
14 *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996) (“To determine whether the
15 claimant's testimony regarding the severity of her symptoms is credible, the ALJ may
16 consider, for example: (1) ordinary techniques of credibility evaluation, such as the
17 claimant's reputation for lying, prior inconsistent statements concerning the symptoms, and
18 other testimony by the claimant that appears less than candid; (2) unexplained or
19 inadequately explained failure to seek treatment or to follow a prescribed course of
20 treatment; and (3) the claimant's daily activities.”).

21 Here, Plaintiff refers to numerous medical records showing her alleged symptoms
22 over the relevant period (between November 2018 and April 2021), including chronic
23 headaches and migraines with throbbing and stabbing pain, bulging sensations and pressure
24 behind her right eye exacerbated by exposure to light and eye movement, blurred vision,
25 occasional memory loss, confusion, slowed mental processing, nausea, dizziness, sleep
26 disturbances, visual disturbances, difficulty with word finding and concentration, increased
27 irritability and emotional sensitivity, low back and neck pain, speech and motor skills
28 issues, occasional vomiting, exacerbated headache pain when turning her head or while

1 driving, noise sensitivity, limited cervical spine range of motion, limited daily functions,
2 vertigo, seizure-like symptoms with shaking, and anxiety and depression. (Doc. 14 at 3–5
3 (citing AR 429, 431, 433–34, 436, 450, 459, 467, 469, 472, 491–92, 505, 508, 531, 534,
4 539, 606–07, 611, 620, 621)). At the Hearing, Plaintiff testified to many of these symptoms,
5 including her frequent (at least three times per week) and unpredictable migraines, pain in
6 her neck when doing activities with her hands, inability to look down or stay in one position
7 for long periods of time, her frequent need for rest breaks, light and noise sensitivity
8 especially in public, difficulties with speech and word recall, vomiting, and her need to lie
9 down for one to two hours or even the remainder of the day whenever she had a migraine.
10 (See AR 97–98, 104, 106–10).

11 After reviewing the medical record and considering Plaintiff’s hearing testimony,
12 the ALJ found that although Plaintiff’s “medically determinable impairments could
13 reasonably be expected to cause the alleged symptoms,” Plaintiff’s “statements concerning
14 the intensity, persistence and limiting effects of these symptoms are not entirely consistent
15 with the medical evidence and other evidence in the record.” (AR 34). The ALJ explained
16 that Plaintiff’s testimony about the intensity, persistence, and limiting effects of her
17 symptoms was inconsistent “because [Plaintiff]’s alleged physical limitations are not well
18 supported by the record.” (*Id.*). The ALJ found that Plaintiff’s allegations of disabling pain
19 and limitations were out of proportion with several aspects of the record, including “the
20 nature, location, onset, duration, frequency, radiation, and intensity of [Plaintiff]’s
21 pain[;] . . . the type, dosage, effectiveness, and adverse side effects of any pain medication;
22 other treatment, other than medication, for relief of pain; functional restrictions; and
23 [Plaintiff]’s daily activities.” (*Id.*).

24 After making these general conclusions, however, the ALJ “drift[ed] into a
25 discussion of the medical evidence” and failed to meaningfully explain how such evidence
26 contradicted Plaintiff’s symptom testimony. See *Burrell v. Colvin*, 775 F.3d 1133, 1137
27 (9th Cir. 2014). The ALJ failed to even identify the specific symptom testimony that he
28 found unbelievable; this failure was no slight oversight either, given the lengthy list of

1 symptoms Plaintiff alleges. *See Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014)
 2 (quotations and citation omitted) (“General findings are insufficient; rather the ALJ must
 3 identify what testimony is not credible and what evidence undermines the claimant’s
 4 complaints.”); *Perini v. Comm’r of Soc. Sec. Admin.*, No. CV-20-02427-PHX-MTL, 2022
 5 WL 740925, at *3 (D. Ariz. Mar. 11, 2022) (emphasis added) (“This requirement [that
 6 ALJ’s discrediting of symptom testimony be supported by specific, clear, and convincing
 7 reasons] must be fulfilled as to *each* discounted symptom, rather than the symptoms
 8 collectively.”); SSR 16-3p, 2017 WL 5180304 (Oct. 25, 2017) (emphasis added) (“We will
 9 explain *which* of an individual’s symptoms we found consistent or inconsistent with the
 10 evidence in his or her record and *how* our evaluation of the individual’s symptoms led to
 11 our conclusions.”). Defendant posits that the ALJ relied on contradictions between
 12 Plaintiff’s level of activity and subjective complaints, the fact that Plaintiff responded well
 13 to treatment, the fact that Plaintiff unilaterally stopped taking prescribed medications, and
 14 inconsistencies with the medical record. (Doc. 18 at 5).

15 First, it does not appear that the ALJ found any contradictions between Plaintiff’s
 16 level of activity and her symptom testimony. The ALJ’s discussion of Plaintiff’s activities
 17 that Defendant’s Response refers to—(see Doc. 18 at 8–9)—is found in a different section,
 18 preceding the one in which the ALJ discusses Plaintiff’s symptom testimony, and more
 19 importantly, does not identify any inconsistencies between those activities and Plaintiff’s
 20 reported symptoms. Specifically, the ALJ was discussing the fourth area of functioning in
 21 the “paragraph B” criteria, writing:

22 [T]he claimant also stated that she is able to handle self-
 23 care and personal hygiene. Meanwhile, the objective evidence
 24 in the record showed the claimant to have appropriate
 25 grooming and hygiene and normal mood and affect.
 Therefore, the claimant has mild limitations in her ability to
 adapt or manage herself.

26 (AR 33 (citations omitted)). Defendant’s Response attempts to draw contradictions
 27 between Plaintiff’s ability to handle her own daily needs such as hygiene and grooming
 28 and her symptom testimony, but the Court must “review the ALJ’s decision based on the

1 reasoning and factual findings offered by the ALJ—not *post hoc* rationalizations that
 2 attempt to intuit what the adjudicator may have been thinking.” *Bray v. Comm’r of Soc.*
 3 *Sec. Admin.*, 554 F.3d 1219, 1225 (9th Cir. 2009).

4 Setting aside the above paragraph found in a separate, preceding section, the *only*
 5 example provided by the ALJ of an activity contradicting or undermining Plaintiff’s
 6 symptom testimony was the ALJ’s brief reference to Plaintiff’s “regular participation in
 7 yoga.” (AR 35). As Plaintiff points out, (*see* Doc. 19 at 7), the ALJ did not elaborate on
 8 Plaintiff’s participation in yoga—such as how long each yoga session lasted, what
 9 constitutes “regular” participation (*i.e.*, how often she did yoga), the nature or extent of the
 10 yoga session—or otherwise explain exactly how Plaintiff’s participation in yoga
 11 demonstrated that her symptoms were not of the severity that she claimed. Without such
 12 explanation, the Court cannot say that the ALJ supported his credibility finding by simply
 13 pointing out that Plaintiff regularly participated in yoga; at the least, the ALJ should have
 14 explained that the yoga participation amounted to a “substantial part” of her day and that
 15 it involved “physical functions that are transferrable to a work setting.” *See Vertigan v.*
 16 *Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001) (emphasis in original) (quoting *Morgan v.*
 17 *Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999)) (“With respect to daily
 18 activities, this court has held that if a claimant ‘is able to spend a *substantial part* of her
 19 day engaged in pursuits involving the performance of physical functions that are
 20 transferrable to a work setting, a specific finding as to this fact may be sufficient to discredit
 21 a claimant’s allegations.”).³ Aside from this passing reference to yoga, there is no other
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23 ³ “This court has repeatedly asserted that the mere fact that a plaintiff has carried on
 24 certain daily activities, such as grocery shopping, driving a car, or limited walking for
 25 exercise, does not in any way detract from her credibility as to her overall disability. One
 26 does not need to be ‘utterly incapacitated’ in order to be disabled. . . . In addition, activities
 27 such as walking in the mall and swimming are not necessarily transferable to the work
 28 setting with regard to the impact of pain. A patient may do these activities *despite* pain for
 therapeutic reasons, but that does not mean she could concentrate on work despite the pain
 or could engage in similar activity for a longer period given the pain involved.” *Vertigan*,
 260 F.3d at 1050 (citation omitted) (emphasis in original).

1 indication that the ALJ discredited Plaintiff's symptom testimony based on inconsistencies
2 with her daily activities or overall activity level.

3 Second, Defendant's argument that the ALJ supported his credibility assessment by
4 pointing out that Plaintiff responded well to treatment, (*see* Doc. 18 at 8), is a generous
5 characterization of the ALJ's reasoning. The ALJ never explicitly stated this. Rather, the
6 ALJ merely stated that "treatment notes from March 25, 2020, noted that [] the claimant
7 reports her headaches are less severe and less frequent," without any mention of whether
8 such improvement was actually the result of treatment. (AR 35). The ALJ's purported
9 "treatment" justification stopped there and failed to include any other examples of Plaintiff
10 responding well to treatment in a manner which undermined her symptom testimony.
11 Moreover, the ALJ entirely failed to explain whether or how this single examination report
12 from March 2020 was meaningfully inconsistent with Plaintiff's symptom testimony.
13 Without more, it is unclear how much less severe or how much less frequent Plaintiff's
14 headaches had become; the headaches may *still* have been debilitating and frequent, even
15 after the improvement. Even assuming that the headaches had subsided to a substantial
16 degree, the ALJ's explanation says nothing about whether Plaintiff's *other* symptoms had
17 responded positively to treatment. *See Lizeth A. v. Comm'r of Soc. Sec.*, No. 1:17-cv-
18 03074-MKD, 2018 WL 4179097, at *5 (E.D. Wash. Aug. 7, 2018) (quoting *Ghanim*, 763
19 F.3d at 1162) ("Observations of improvement must be 'read in context of the overall
20 diagnostic picture' of an individual, and improvement in some symptoms does not indicate
21 nondisability under the Social Security Act."). In sum, the ALJ did not elaborate on how
22 Plaintiff's purported improvement related to her symptom testimony, nor did he establish
23 that Plaintiff's symptoms as a whole are controlled such that Plaintiff is not disabled. *See*
24 *Lopez v. Colvin*, 194 F. Supp. 3d 903, 911 (D. Ariz. 2016) (quoting *Warre v. Comm'r of*
25 *Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006)) ("But to reject a claimant's
26 testimony, it is not enough for the ALJ to show that the [symptoms were] responsive to
27 treatment; the ALJ must show that the [symptoms were] 'controlled,' *i.e.*, no longer
28 debilitating."). Thus, this is not a clear and convincing reason for discrediting her

1 testimony.

2 Third, the fact that Plaintiff unilaterally stopped taking prescribed medications is
3 not necessarily inconsistent with Plaintiff's symptom testimony, and the ALJ did not
4 explain whether or how it was inconsistent. The ALJ simply stated that—with regard to
5 Plaintiff's difficulties with speech and word finding, low concentration, frequent
6 exhaustion, and memory loss—Plaintiff “was prescribed appropriate medications, but
7 reports that the medications were ineffective and she subsequently stopped taking the
8 medication.” (AR 35). The ALJ stopped there. Defendant cites to *Molina*, (*see* Doc. 18 at
9 8), a Ninth Circuit case providing that a claimant's “unexplained or inadequately explained
10 failure to seek treatment or to follow a prescribed course of treatment” may be considered
11 in assessing a claimant's credibility. *Molina v. Astrue*, 674 F.3d 1104, 1113–14 (9th Cir.
12 2012). But *Molina* does not describe the present situation, at least based on the ALJ's
13 discussion of Plaintiff's symptom testimony. Rather, the ALJ expressly recognized that
14 Plaintiff found the prescriptions *ineffective*, and the ALJ—aside from stating that the
15 prescriptions were “appropriate”—did not offer any explanation to the contrary, *i.e.*, that
16 the prescriptions were effective at controlling or minimizing Plaintiff's symptoms. Thus,
17 the Court cannot say that Plaintiff's decision to stop taking the medications was an
18 “unexplained or inadequately explained failure to seek treatment” because, at least
19 according to the ALJ's decision, Plaintiff believed that the medication was not working—
20 a reasonably adequate explanation for one to stop taking a prescription. In sum, the ALJ
21 failed to meaningfully elaborate on how Plaintiff's decision to stop taking certain
22 medications—*medications which she reported were ineffective*—related to her symptom
23 testimony, let alone how such a decision by Plaintiff contradicted or undermined specific
24 parts of Plaintiff's symptom testimony.

25 The last remaining reason is that Plaintiff's symptom testimony is inconsistent with
26 the medical record. (*See* AR 34 (“As for the claimant's statements about the intensity,
27 persistence, and limiting effects of her symptoms, they are inconsistent because the
28 claimant's alleged physical limitations are not well supported by the record.”)). The ALJ

1 noted that evaluations immediately after the motor vehicle accident showed that Plaintiff
2 “was alert and oriented, speech clear and fluent, and that she was able to comprehend two-
3 step commands.” (AR 34). The ALJ also pointed to a September 2019 MRI which “showed
4 no acute intracranial findings.” (AR 35). The ALJ also cited to “neurological examinations
5 [] not[ing] benign findings” and “[t]reatment notes not[ing] normal strength, range of
6 motion, and gait.” (*Id.*). Such references to the medical record did not sufficiently satisfy
7 the ALJ’s duty to provide specific, clear, and convincing reasons for rejecting Plaintiff’s
8 symptom testimony because the ALJ failed draw connections between these references to
9 the medical record and specific aspects of Plaintiff’s symptom testimony that he found to
10 be discredited. *See Nelson v. Comm’r of Soc. Sec. Admin.*, No. CV-19-08027-PCT-JZB,
11 2020 WL 1510332, at *3 (D. Ariz. Mar. 30, 2020) (“Indeed, this Court has repeatedly
12 rejected ALJ rationale that discussed medical evidence but provided no connection
13 between that discussion and rejection of claimant’s symptom testimony.”). Moreover,
14 Plaintiff cites to numerous other medical records—from both before and after the records
15 cited by the ALJ—*supporting* her symptom testimony.

16 Finally, even assuming that the ALJ sufficiently explained how the medical
17 evidence undermined Plaintiff’s symptom testimony—and even ignoring Plaintiff’s
18 competing citations to the records—this reason alone cannot suffice for discrediting
19 subjective symptom testimony. The Ninth Circuit has held that “once the claimant produces
20 objective medical evidence of an underlying impairment, [the ALJ] may not reject a
21 claimant’s subjective complaints based *solely* on a lack of objective medical evidence to
22 fully corroborate the alleged severity of pain.” *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th
23 Cir. 1991) (emphasis added). This rule recognizes that “pain is a subjective phenomenon,”
24 and it “cannot be objectively verified or measured.” *Id.* (citation omitted). Even assuming
25 that Plaintiff’s symptom testimony was unsupported by the medical evidence, then, it is
26 insufficient support on its own to discredit the testimony. In sum, the Court finds that the
27 ALJ erred in rejecting Plaintiff’s subjective symptom testimony.

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1 **IV. CONCLUSION**

2 In conclusion, the Court agrees with Plaintiff that although the ALJ “provided a
3 short summary of some of [Plaintiff]’s medical records . . . and included some benign
4 findings on examinations,” the ALJ “failed to tie-in the characterization of the medical
5 record with any specific alleged inconsistency within [Plaintiff]’s symptom testimony.”
6 (*See* Doc. 14 at 9). The ALJ erred because he did not specifically identify which parts of
7 Plaintiff’s symptom testimony he found to be uncredible and thereby failed to provide
8 specific, clear, and convincing reasons for rejecting Plaintiff’s symptom testimony.

9 Finding error in the ALJ’s evaluation and discussion of the evidence, this case will
10 be remanded. “The proper course, except in rare circumstances, is to remand to the agency
11 for additional investigation or explanation.” *Treichler v. Comm’r of Soc. Sec.*, 775 F.3d
12 1090, 1099 (9th Cir. 2014) (internal quotation marks omitted). Plaintiff argues instead that
13 the Court should apply the credit-as-true rule and remand for calculation of benefits. One
14 of the requisite conditions for applying the credit-as-true rule, however, is that “the record
15 has been fully developed and further administrative proceedings would serve no useful
16 purpose.” *Garrison v. Colvin*, 759 F.3d 995, 1020–21 (9th Cir. 2014) (“[The Court has]
17 flexibility to remand for further proceedings when the record as a whole creates serious
18 doubt as to whether the claimant is, in fact, disabled within the meaning of the Social
19 Security Act.”). The Court finds that this case would benefit from further administrative
20 proceedings to develop and clarify the record.

21 Accordingly,

22 **IT IS ORDERED** that the April 29, 2021 final decision (AR 29–38) of the
23 Commissioner of Social Security is **vacated** and this matter is **remanded** to the
24 Commissioner of Social Security for further proceedings consistent with this Order.

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1 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment
2 accordingly and **terminate this action.**

3 Dated this 24th day of May, 2023.

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6 Honorable Steven P. Logan
7 United States District Judge
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